

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re :  
: Chapter 11 Case No.  
FORMICA CORPORATION, et al., : 02-10969 (BRL)  
: (Jointly Administered)  
: Debtors. :  
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**STIPULATION AND AGREED ORDER RESOLVING THE CLAIMS OF:  
(I) THE SKINNER LANDFILL SITE WORK GROUP (CLAIM NUMBER 582),  
AND (II) THE TRUSTEES OF THE PRISTINE FACILITY (CLAIM NUMBER 583)**

This Stipulation and Agreed Order ("*Agreed Order*") resolves objections to claims related to the Skinner Landfill Superfund Site in West Chester, Ohio (the "*Skinner Site*") and the Pristine Superfund Site in Reading, Ohio (the "*Pristine Site*"). With respect to the Skinner Site, the Agreed Order is entered into by and among: Formica Corporation ("*Formica*") and its affiliated debtors, as reorganized (collectively, with Formica, the "*Debtors*" and, from and after June 10, 2004, the "*Reorganized Debtors*"); The Skinner Landfill Site Work Group (the "*Skinner Group*"); and the United States of America, on behalf of the United States Environmental Protection Agency ("*EPA*"). With respect to the Pristine Site, the Agreed Order is entered into by and among the Reorganized Debtors, The Trustees of the Pristine Facility Trust Fund Agreement (the "*Pristine Trustees*"), and the United States on behalf of EPA.

**RECITALS:**

A. On March 5, 2002, each of the Debtors filed with the Court a voluntary petition for relief under title 11 of the United States Code (the "*Bankruptcy Code*").

B. On January 13, 2004, the Court entered an order confirming the Debtors' Second Amended and Restated Joint Plan of Reorganization (as confirmed, the "*Plan*"). The Effective Date (as such term is defined in the Plan) occurred on June 10, 2004.

C. On May 3, 2002, Formica filed with the Court its Schedules of Assets and Liabilities (the “**Schedules**”). Among the claims listed on the Schedules were two undisputed, liquidated, and noncontingent claims by the United States on behalf of EPA. One of these claims, in the amount of \$702,070.00, relates to Formica’s liability for environmental remediation costs at the Skinner Site (the “**Skinner Scheduled Claim**”). The other claim, in the amount of \$5,086,021.00, relates to Formica’s liability for environmental remediation costs at the Pristine Site (the “**Pristine Scheduled Claim**”).

D. The Skinner Group is performing environmental remediation at the Skinner Site pursuant to a Consent Decree (the “**Skinner Consent Decree**”) entered on April 2, 2001, in *United States v. Elsa Skinner-Morgan*, Civ. Action No. C-1-00-424 (S.D. Ohio). The Pristine Trustees are performing environmental remediation at the Pristine Site pursuant to a Consent Decree (the “**Pristine Consent Decree**”) entered on October 23, 1990, in *United States v. American Greetings Corp.*, Civ. Action No. C-1-89-837 (S.D. Ohio).

E. Pursuant to the Skinner Consent Decree, EPA has created a special account (the “**Skinner Landfill Special Account**”), a portion of whose funds are designated for the partial reimbursement of remediation costs incurred by the Skinner Group. EPA has yet to create a special account for reimbursement of the Pristine Trustees.

F. On October 15, 2002, the Skinner Group and Pristine Trustees each filed an unsecured claim against Formica. The claims relate to certain alleged liabilities owed by Formica in connection with environmental remediation at the Skinner and Pristine Sites, respectively. On January 12, 2004, the Debtors objected to these claims (hereinafter, the “**Disputed Claims**”), and on February 17, 2004, the Skinner Group and Pristine Trustees responded to the Debtors’ objections (hereinafter, the “**Reorganized Debtors’ Objections**”).

G. After engaging in good faith, arm's-length negotiations, the parties hereto (the "**Parties**") have reached an agreement resolving the Disputed Claims and the Reorganized Debtors' Objections, and seek to formalize their agreement pursuant to the terms of this Agreed Order.

**AGREEMENT:**

1. The United States on behalf of EPA is hereby granted allowed claims against Formica in the amounts of \$744,523 and \$4,100,000 (respectively, the "**Skinner Allowed Claim**" and the "**Pristine Allowed Claim**"). These claims shall be treated as General Unsecured Claims in Class D under the Plan and shall supercede in their entirety the Skinner Scheduled Claim and Pristine Scheduled Claim.

2. Any amount received by EPA on account of the Skinner Allowed Claim (the "**Skinner Distribution**") shall be deposited by EPA in the Skinner Landfill Special Account, and any amount received by EPA on account of the Pristine Allowed Claim (the "**Pristine Distribution**") shall be deposited by EPA in an account receivable (the "**Pristine Special Account**"), segregated within the EPA Hazardous Substance Superfund (the "**Hazardous Substance Superfund**"). EPA shall establish the Pristine Special Account as soon as practicable, and no later than thirty (30) days after the date on which this Agreed Order is approved by the Court.

3. Formica shall not cause the Pristine Distribution to be made unless and until it is provided with written notification from the United States that the Pristine Special Account has been established ("**Written Notification**"). Within five (5) business days of the establishment of the Pristine Special Account, the United States shall send the Written Notification to Formica or its counsel via overnight mail. After receipt of the Written Notification, Formica shall cause the Pristine Distribution to be paid to EPA in accordance with the terms of the Plan.

4. The Skinner Distribution shall be retained and used to conduct or finance response actions at or in connection with the Skinner Site, or shall be transferred by EPA to the Hazardous Substance Superfund, in accordance with Paragraphs 85 through 92 of the Skinner Consent Decree. The Pristine Distribution shall be retained and used to conduct or finance response actions at or in connection with the Pristine Site, or shall be transferred by EPA to the Hazardous Substance Superfund, in accordance with the attached Agreement between the United States and the Pristine Trustees (the “*Attachment*”).

5. Upon entry of this Agreed Order, the Disputed Claims and the Reorganized Debtors’ Objections shall be deemed withdrawn with prejudice. The Skinner Group and Pristine Trustees shall have no other claims against any of the Debtors or Reorganized Debtors in their chapter 11 cases or otherwise with respect to the Skinner and Pristine Sites, nor shall the United States have any such claims on behalf of EPA, except for the Skinner Allowed Claim and Pristine Allowed Claim.

6. Upon entry of this Agreed Order, the Debtors and the Reorganized Debtors waive any claims or causes of action against the United States with respect to the Skinner and Pristine Sites, including but not limited to: any direct or indirect claim for reimbursement from the Hazardous Substance Superfund, any claims for contribution against the United States, its departments, agencies or instrumentalities, and any claims arising out of response activities at the Skinner and Pristine Sites. Nothing in this Settlement Agreement shall be construed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611 or 40 C.F.R. § 300.700(d).

7. Any person who executes this Agreed Order on behalf of any of the Parties represents that he or she is duly authorized to do so.

8. This Agreed Order may be executed in counterparts, and each such counterpart together with the others shall constitute one and the same instrument. The Parties further agree that facsimile signatures hereon shall be deemed to be original signatures.

9. This Agreed Order shall be binding upon and inure to the benefit of each of the Parties, and upon their respective assignees, successors, and/or partners.

10. The terms of this Agreed Order shall be binding upon, and not be subject to rejection or avoidance by, the Reorganized Debtors, their creditors, or any other party in interest, including any trustee or examiner appointed in these cases or any subsequent or converted cases of the Reorganized Debtors under chapter 7 or chapter 11 of the Bankruptcy Code.

11. Neither this Agreed Order nor any actions taken pursuant hereto shall constitute an admission by any of the Parties.

12. The Court shall retain exclusive jurisdiction over any and all controversies, disputes, claims, or other matters arising under or otherwise relating to this Agreed Order to the extent any such controversies, disputes, claims, or other matters relate to the Debtors or the Reorganized Debtors.

13. After being executed by all of the Parties, this Agreed Order, along with the Attachment, shall be lodged with the Court for public comment. The United States shall publish notice of the lodging in the *Federal Register*, and the public shall be allowed to comment on the Agreed Order and Attachment for a period of thirty (30) days following the date of the notice's publication. The United States reserves the right to withdraw its consent to the Agreed Order and Attachment if it concludes that public comments regarding the Agreed Order and/or the Attachment disclose facts or considerations which indicate that the Agreed Order and/or the Attachment is not in the public interest. The Reorganized Debtors, the Skinner Group, and the

Pristine Trustees agree not to seek Court approval of the Agreed Order unless and until the United States notifies them in writing that it has decided not to withdraw its consent pursuant to the preceding sentence.

14. This Paragraph and Paragraph 13 above shall take effect as soon as this Agreed Order is executed by all of the Parties. However, Paragraphs 1 -12 above shall be of no force or effect unless and until this Agreed Order is approved by the Court.

**STIPULATED AND AGREED:**

**FOR THE REORGANIZED DEBTORS:**

Date: January 31, 2005

By:

\_\_\_\_\_  
Alan B. Miller (AM 2817)  
Stephen Karotkin (SK 7357)  
Weil, Gotshal & Manges, LLP  
767 Fifth Avenue  
New York, New York 10153

**FOR THE SKINNER GROUP AND  
THE PRISTINE TRUSTEES:**

Date: January 31, 2005

By:

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Richard L. Ferrell (OH Bar #0063176)  
Taft, Stettinius & Hollister, LLP  
425 Walnut Street, Ste. 1800  
Cincinnati, Ohio 45240

FOR THE UNITED STATES ON BEHALF  
OF EPA:

Date: January 28, 2005

By:

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Sarah S. Normand (SN 2834)  
Assistant United States Attorney  
Southern District of New York  
86 Chambers Street  
New York, New York 10007

SO ORDERED

this \_\_\_\_ day of March, 2005.

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HONORABLE BURTON R. LIFLAND  
UNITED STATES BANKRUPTCY JUDGE

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

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In re	:
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FORMICA CORPORATION, <u>et al.</u> ,	:
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Debtors.	:
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Chapter 11 Case No.  
02-10969 (BRL)  
  
(Jointly Administered)

ATTACHMENT TO THE STIPULATION AND AGREED  
ORDER RESOLVING THE CLAIMS OF: (I) THE SKINNER LANDFILL  
SITE WORK GROUP (CLAIM NUMBER 582), AND (II) THE  
TRUSTEES OF THE PRISTINE FACILITY (CLAIM NUMBER 583)

AGREEMENT  
BETWEEN THE UNITED STATES AND THE PRISTINE TRUSTEES

1. Definitions. Any capitalized terms not defined in the Agreed Order or this Attachment shall have the meaning ascribed to them in the Pristine Consent Decree.
2. Agreement to Disburse Special Account Funds. Subject to the terms and conditions set forth in this Attachment, EPA agrees to make the Pristine Distribution, including Interest Earned thereon, available for disbursement to the Pristine Trustees from the Pristine Special Account as partial reimbursement for the performance of Work under the Pristine Consent Decree.<sup>1</sup>
3. Timing of Disbursement of Special Account Funds. Within ninety (90) days of EPA's receipt of a Cost Summary and Certification, as defined by Paragraph 4 below, or if EPA has requested additional information under Paragraph 4 or a revised Cost Summary and Certification under Paragraph 5 below, within sixty (60) days of receipt of the additional information or revised Cost Summary and Certification, EPA shall disburse funds from the Pristine Special Account, subject to the conditions set forth in this Attachment.

<sup>1</sup> For purposes of Paragraph 2 above, "Interest Earned" shall mean interest earned on the Pristine Distribution from the date it is received by EPA. "Interest Earned" shall be computed monthly at a rate based on the annual return on investments of the Hazardous Substance Superfund. The applicable rate of interest shall be the rate in effect at the time the interest accrues.

4. Requests for Disbursement of Special Account Funds. The Pristine Trustees may periodically submit to EPA a Cost Summary and Certification, which shall include: *(a)* a written summary of costs incurred and paid by the Pristine Trustees for Work performed under the Pristine Consent Decree over a specified period of time; and *(b)* the following statement signed by an independent Certified Public Accountant or other person acceptable to EPA:

To the best of my knowledge, and after thorough investigation and review of the supporting documentation provided to me by the Pristine Trustees, I certify that the information contained in or accompanying this submittal is true, accurate, and complete. I am aware that there are significant penalties for knowingly submitting false information, including the possibility of fine and imprisonment.

The person signing the above statement shall provide EPA with a list of the documents that he or she reviewed in support of the Cost Summary and Certification, and the Pristine Trustees shall submit to EPA any additional information requested by EPA for its review and approval of a Cost Summary and Certification.

5. Recalculation of Costs. If EPA determines that a Cost Summary and Certification includes a mathematical accounting error, costs excluded under Paragraph 6 below, costs that are inadequately documented, or costs submitted in a prior Cost Summary and Certification, EPA will notify the Pristine Trustees and allow them to submit a revised Cost Summary and Certification. If the Pristine Trustees fail to submit a revised Cost Summary and Certification within thirty (30) days of being given notice of the opportunity to do so, EPA will recalculate the amount eligible for disbursement for that submission and disburse the corrected amount to the Pristine Trustees in accordance with Paragraph 3 above.

6. Costs Excluded from Disbursement. Disbursements shall not be made from the Pristine Special Account for the following: *(a)* payments by the Pristine Trustees, or any Settling Defendant under the Pristine Consent Decree, to the United States in connection with the Pristine Site, including but not limited to any interest or stipulated penalties paid pursuant to the Pristine Consent Decree or Paragraph 8 below; *(b)* attorneys' fees and costs, except for reasonable attorneys' fees and costs related to access and/or institutional controls which are necessary for performance of Work under the Pristine Consent Decree; *(c)* costs of any response activities that are not required under, or approved by EPA pursuant to, the Pristine Consent Decree; *(d)* costs related to the litigation, settlement, or development of potential contribution claims by the Pristine Trustees or any Settling Defendant under the Pristine Consent Decree; *(e)* internal costs of the Pristine Trustees or any Settling Defendant under the Pristine Consent Decree, including but not limited to salaries, travel, or in-kind services, except for costs that represent the work of

employees directly performing Work under the Pristine Consent Decree; *(f)* costs incurred by the Pristine Trustees or any Settling Defendant under the Pristine Consent Decree prior to the Effective Date of the Pristine Consent Decree; and *(g)* costs incurred by the Pristine Trustees or any Settling Defendant under the Pristine Consent Decree in connection with dispute resolution under the Pristine Consent Decree or the Agreed Order.

7. Termination of Special Account Disbursements. EPA's obligation to disburse funds from the Pristine Special Account pursuant to the Agreed Order and this Attachment shall terminate upon EPA's determination that the Pristine Trustees: *(a)* have knowingly submitted a materially false or misleading Cost Summary and Certification; and/or *(b)* have submitted a materially inaccurate or incomplete Cost Summary and Certification, and have failed to correct that Cost Summary and Certification within thirty (30) days after being given notice of the opportunity to do so. EPA's obligation to disburse funds from the Pristine Special Account shall also terminate upon EPA's assumption of performance of any Work required under the Pristine Consent Decree, when such assumption is not challenged by the Pristine Trustees or, if challenged, is upheld pursuant to any applicable dispute resolution provisions in the Pristine Consent Decree.

8. Recapture of Special Account Disbursements. Upon the termination of disbursements pursuant to Paragraph 7 above, if EPA has previously disbursed funds from the Pristine Special Account for activities that are specifically related to the reason for termination (*e.g.*, if a materially false or misleading submission is discovered after the disbursement of funds based on that submission), EPA shall submit a bill to the Pristine Trustees for any disbursed amount which is specifically related to the reason for termination, plus Interest on that amount covering the period from the date of disbursement of the funds by EPA to the date of repayment of the funds by the Pristine Trustees.<sup>2</sup> Within thirty (30) days of receipt of EPA's bill, the Pristine Trustees shall pay the billed amount by a certified or cashier's check(s). The check(s) shall be made payable to "EPA Hazardous Substance Superfund" and shall reference the name and address of the party making payment, EPA Site/Spill Identification Number 0556, and Department of Justice Case Number 90-11-2-07775. The Pristine Trustees shall send the check to:

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<sup>2</sup> For purposes of Paragraph 8 above, "Interest," shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

United States Environmental Protection Agency, Region 5  
Attention: Program Accounting and Analysis Section; Comptroller Branch  
P.O. Box 70753  
Chicago, Illinois 60673

Upon receipt of payment, EPA may deposit all or any portion thereof in the Pristine Special Account or the Hazardous Substance Superfund. EPA's determination of where to deposit or how to use the funds shall not be subject to challenge by the Pristine Trustees.

9. Balance of Special Account Funds. After EPA issues its written Certification of Completion of the remedial action pursuant to the Pristine Consent Decree, and after EPA completes all disbursements to the Pristine Trustees in accordance with the Agreed Order and this Attachment, if any funds remain in the Pristine Special Account, EPA may transfer such funds to the Hazardous Substance Superfund. Any such transfer of funds shall not be subject to challenge by the Pristine Trustees.

10. Dispute Resolution Any disputes under this Attachment shall be subject to the exclusive jurisdiction of the Court pursuant to Paragraph 11 of the Agreed Order.

**AGREED:**

FOR THE PRISTINE TRUSTEES:

Date: January 11, 2005

By: /

Richard L. Ferrell (OH Bar #0063176)  
Taft, Stettinius & Hollister, LLP  
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FOR THE UNITED STATES ON BEHALF  
OF EPA:

Date: January 21, 2005

By:

Sarah S. Normand (SN 2834)  
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86 Chambers Street  
New York, New York 10007